

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

**MISC LAND APPLICATION No. 19 OF 2020
(An application to file a representative suit)**

EMANUEL NG'WANDU1st APPLICANT
EMANUEL OLY.....2nd APPLICANT
JOHN MICHAEL.....3rd APPLICANT
JESINA CHARLES.....4th APPLICANT

Versus

MASWA DISTRICT COUNCIL.....1st RESPONDENT
MASWA TOWNSHIP AUTHORITY.....2nd RESPONDENT
BUNYONGOLI LUCHAGULA.....3rd RESPONDENT

RULING

Date of the last Order: 18th June, 2020
Date of the Ruling: 3rd August, 2020

MKWIZU, J.:

The applicants EMANUEL NG'WANDU & three others moved this Court under the provisions of Order 1 Rule 8 of the Civil Procedure Code (Cap. 33 R:E 2002] for the following orders:

1. That may the Honourable Court be pleased to grant leave to the applicants to file a land case against the respondent on behalf of the 111 others whose list in annexed hitherto and is marked as ANNEXTURE –FS-1 the applicant being inclusive.

2. Costs

3. Any other further relief (s) as the honourable Court may deem just.

The chamber summons was supported by an affidavit sworn at Shinyanga on 14th May, 2019 by Mr. FRANK SAMWEL counsel for the applicants who at the hearing advanced reasons for the court to grant the prayer for leave for the applicants to represent other 111. When the application was called for hearing on 18th June 2020 Ms Schola Kisibo appeared for the respondents.

Apart from adopting his affidavit in support of the application as part of his submission in Court, Mr. Frank submitted that, the application is for leave by the 4 applicants to file a representative suit on behalf of the 111 intended plaintiffs whose names list was appended to the application as

annexure FS1. He added that, the reason for the application is for convenience purpose as attendance of 111 persons in court may cause inconvenience. He said, the applicants were appointed by the 111 intended plaintiffs in their meeting conducted on 6/4/2019.

In response, Ms. Schola for the respondents opposed the application. She submitted that the minutes of the meeting appointed the applicants attached to the application contains almost 40 members who did not sign the minutes.

In rejoinder, Mr. Frank insisted on his earlier on prayer. He suggested that, respondent having not filed a counter affidavit ought to have limited her submissions on points of law only.

Having gone through the application, reasons for the application advanced in the affidavit by the Applicant's advocate and parties' submissions, my tasks is to see whether the applicants have justified their prayer for the court to exercise its discretion. **Order 1 Rule 8 of the Civil Procedure Code Act Cap 33 RE 2019** provides:

“Where there are numerous person having the same interest in one suit, or more of such person may, with the permission of the court, sue or be sued, or may defend, in such suit, on behalf or the benefit of all person so interest: but the court shall in such case give at the plaintiff’s expense, notice of institution of the suit to all such persons either by personal person service or, where from the number of person or any other cause such service is not reasonable practicable by the public advertisement, as the court in each court may direct”

From the above provision, in applications for representative suit the applicants have to prove that they stand on the same interest in the suit and that they have appointed one or more persons to appear and be heard or defend in such dispute on behalf of or for the benefit of all interested persons. The affidavit in support of the application has explained the reasons why applicants are coming with the prayers they have placed before the court in this application. Paragraphs 2, 6, 7 and 8 of the affidavit to the chamber application reads;

2- That the 26th February 2019, the applicants and 97 others whose list is annexed to this application marked as ANNEXTURE FS -1 served as 30 days statutory notice with an intention to

sue the respondents to the respondents. The copy of the Demand notice is annexed hitherto and is marked as ANNEXTURE FS-2

6- That, the intended number of the plaintiff is 111

7- That this Number of 111 people is so big and it may not be convenient for such a big number to attend in court.

8- That the intended plaintiffs through the meeting they conducted on the 6th April, 2019 have appointed the applicants to sue on behalf of 111 plaintiffs the applicants being inclusive. The copy of minutes is attached ANNEXTURE FS-3

The list of the intended plaintiffs attached in the application bears 71 names of persons who signed to signify their agreement on the appointment of the applicants as their representative, and 40 others who did not sign against their names, 39 out of whom did not attend the meeting in which the applicants were appointed.

Challenging the said list, Ms. Schola said, there are some intended plaintiffs who did not sign the list. I think this is a crucial point. In emphasizing on the need to obtain leave for a representative suit, the Court of Appeal in **KJ**

Motors & 3 Others Ltd Vs Richard Kishimba & Others, Civil Appeal

No. 74 of 1999, at Dar es Salaam, said:

"the rationale for this view is fairly apparent Where, for instance, a person comes forward and seeks to sue on behalf of other persons, those other persons might be dead, non-existent or either fictitious. Else he might purport to sue on behalf of persons who have not, in fact, authorized him to do so. If this is not checked it can lead to undesirable consequences. The Court can exclude such possibilities only by granting leave to the representative to sue on behalf of persons whom he must satisfy the Court they do exist and that they have duly mandate him to sue on their behalf."

The above authority explains it all, leave to file a representative suit should be granted only where it is to the satisfaction of the court that the intended representative is /were duly appointed by the rest, and that the persons who wish to be represented are existing personnel and not otherwise.

In paragraph 8 of the supporting affidavit, the counsel averred that all 111 intended plaintiffs did appoint the 4 applicants to represent them. This is

an unconcealed lie. As shown above, 40 members out of 111 did not sign to imply their readiness to be represented by the applicants in this application and no explanation was given for this omission. In other words, the applicants failed to show that they were appointed by all 111 members to represents them in the intended representative suit.

The application is therefore without merit. It is hereby dismissed.

No order as to costs.

It is so ordered.

DATED at **SHINYANGA** this 3rd day of **AUGUST**, 2020.



E.Y. Mkwizu
E.Y.MKWIZU
JUDGE
3/08/2020